S.B. Civil Sales Tax Revision No.263/2006

Commercial Taxes Officer, Special Circle II, Jodhpur

vs.

M/s. Leela Alloys Pvt. Ltd.

Date : 3.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.

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Heard learned counsel for the petitioner.

This revision petition is against the order of the Rajasthan Tax Board dated 23.5.2005 by which the Tax Board dismissed the appeal of the petitioner preferred against the order of Deputy Commissioner (Appeal), Jodhpur dated 20.2.2004. The Deputy Commissioner set aside the order of Commercial Taxes Officer, Special Circle II, Jodhpur dated 14.11.2002 to the extent of tax liability of Rs.51,252/- and interest thereon amounting to Rs.79,862/-.

According to learned counsel for the petitioner, the assessing authority rightly assessed the tax after considering all the material facts for assessment. The assessing authority observed that the petitioner had 5 machines and out of these 5 machines, 4 machines were covered under the Sales Tax Incentive Scheme. The assessee disclosed the production from 4 machines more than the maximum production capacity from those machines to avail

the tax exemption by manipulation by showing the production from those 4 machines more. Not only this, the assessee has shown less production from the machine which was not having the tax exemption benefit, therefore, the assessing authority imposed additional tax and interest thereon.

The appellate authority set aside that imposition of additional tax and interest and further appeal against the said order of appellate authority was dismissed by the Tax Board.

It is submitted that the facts which are not in dispute are that the production from those machines which were covered under the sales tax incentive scheme have been shown beyond the production capacity from those machines and the production from the machine which was not covered under the sales tax incentive scheme has been shown less, therefore, the assessee has avoided the tax and has furnished the return by showing the production from various machines more rather than from actual production from the said machines.

I have considered the submissions of learned counsel for the petitioner and perused the reasons given by the assessing authority, appellate authority and the tax board.

So far as the order of the assessing authority is concerned, that proceeds on the assumption that since the production from the machines which are covered under the sales tax incentive scheme have been shown more and also

from the production capacity of the machines, therefore, that is production shown from the machines by manipulation. At this place, it may be relevant that no enquiry was conducted by the assessing authority to find out whether production from those machines which were covered under the sales tax incentive scheme shown as maximum production capacity was “in fact” the maximum production capacity from the machines or was optimum production capacity from the machines given by the manufacture company of the machines. It cannot be presumed that a manufacture company will not give the optimum production capacity of the machines in place of maximum production capacity to save itself from any complication of having less production from the machines in the hands of user. The production capacity from the machines beyond optimum capacity shown by the company is not unheard of. In view of the above, merely on the basis of the fact that the production from some machines which may even be old, have been shown beyond the shown production capacity of the machines by manufacturer itself, can be ground to declare that the production from the said machine could not have been taken by the user of the machines.

So far as more production from the machines which are covered under the sales tax incentive scheme and less from the machine which was not covered under the sales tax incentive scheme is concerned, that fact may be relevant fact in certain facts and circumstances but ordinarily a prudent businessman/industrialist will prefer to take

maximum production from those machines which are covered under any sales tax incentive scheme so as to get maximum benefit of tax exemption and for that purpose, he may even take less or minimum production from those machines which are not covered under the sales tax incentive scheme. Acting in such manner by the businessman/industrialist is only an act of prudent man and otherwise may not be an act of prudent man. Saving tax by planning cannot be condemned in any manner. The incentive schemes are framed only to give benefit to those persons who can give industrial production to the Nation.

In view of the above reasons, if the appellate authority and the tax board have reached to the conclusion that the imposition of additional tax on the grounds given by the assessing authority is wrong, I do not find that the two authorities have committed any error of law.

Accordingly, this sales tax revision, having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya